No. 79-2006

IN THE

Supreme Court of the United States

October Term, 1979

LLOYD BARRENTINE, CLYDE G. EDWARDS, CLEO KEENEY, MAXIE BLANTON, JOHNNY ROBINSON, CHARLEY DEATON, H.E. MITTCHELL, AND L.R. YOUNG,

Petitioners,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS AND WAREHOUSEMEN, LOCAL 878, AND A.J. PICKERING, PRESIDENT,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Does an employee's submission of his contractual claim for wages for hours worked to a grievance committee, as required by his collective bargaining agreement, foreclose a federal court from reviewing a subsequent claim under the minimum wage provisions of the Fair Labor Standards Act ("FLSA") where the FLSA claim was not in fact submitted to or passed upon by the grievance committee?

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the district court (Pet. App. 1a-13a) is not officially reported. The opinion of the court of appeals (Pet. App. 14a-31a) is reported at 615 F.2d 1194.

JURISDICTION

The judgment of the court of appeals was entered on February 20, 1980. Mr. Justice Blackmun entered an order on May 9, 1980 extending the time to file a petition for a writ of certiorari until June 19, 1980. The petition for a writ of certiorari was filed on June 19, 1980, and was granted on October 6, 1980. The jurisdiction of this Court rests upon 28 U.S.C. § 1254(1).

STATUTE AND CONTRACTUAL PROVISIONS INVOLVED

Section 6(b) of the Fair Labor Standards Act, 29 U.S.C. § 206(b), provides, *inter alia,* that:

> Every employer shall pay to each of his employees . . . who in any workweek is engaged in commerce or in the production of goods for commerce . . . wages . . . not less than the minimum rate in effect under subsection (a)(1) of this section.

Section 5 of Article 44 of the Southern Conference Area Over-the-Road Supplement to the Teamster National Master Freight Agreement provides, *inter alia,* that:

> It shall be the function of . . . [grievance] committees . . . to settle disputes which cannot be settled between the Employer and the Local Union.

Section 1 of Article 45 of the Southern Conference Area Over-the-Road Supplement to the Teamster National Master Freight Agreement provides, *inter alia,* that:

> The Union and the Employers agree that there shall be no strike, lockout, tie-up, or legal proceedings without first using all possible means of settlement as provided for in this Agreement, and in the National Agreement, if applicable, of any controversy which might arise . . . .

STATEMENT OF THE CASE

A. Facts

All interstate commercial motor carriers and drivers are subject to the Federal Motor Carrier Safety Regulations, 49 C.F.R. § 390 *et seq.*, promulgated by the U.S. Department of Transportation under the authority of the Interstate Commerce Act. 49 U.S.C. § 304. The regulations require, among other things, that before embarking on an over-the-road trip, a driver must perform a safety inspection of his vehicle and refrain from driving it if mechanical defects are discovered. 49 C.F.R. §§ 392.7, 396.4 (1979).

Despite the critical importance of these inspections, respondent Arkansas-Best Freight System ("ABF") has long maintained that it is not required to compensate drivers based at its Little Rock, Arkansas terminal for the time they spend conducting the inspection and, when necessary, taking the vehicle to the company's repair facility.

The driver's daily routine may be summarized briefly. Upon arriving at the terminal to begin a trip, an ABF driver "punches in" on a time clock, picks up the trip manifest, and completes certain preliminary office functions. He is paid at an hourly rate for these activities. After finishing the necessary paperwork, the driver "punches out," locates his vehicle and performs his pre-trip safety inspection. If the driver finds no defects, he proceeds on his trip, and is paid mileage rates for the time spent on the road. However, if mechanical defects are discovered, the driver is required to take the vehicle to ABF's repair facility. In either case, the driver receives no pay for the time spent inspecting the vehicle. Where repairs are necessary, the driver "punches in" on a time

clock at the repair facility and is paid an hourly rate for the time spent awaiting the completion of the repairs (Pet. App. 2a-3a, 18a; App. 44, 47). Generally, it takes from fifteen minutes to a half an hour to inspect the vehicle, and, if defects are discovered, drive it to the repair facility. *See* Attachments to Plaintiffs' Answers to ABF Interrogatory 13. ABF refuses to compensate petitioners for this time.

To challenge this pay practice, two drivers, petitioner Lloyd Barrentine and Jimmy Scates, filed several grievances with their union, Local 878 of the International Brotherhood of Teamsters, Chauffeurs and Warehousemen ("Local 878"), alleging that ABF's failure to pay for this time violated Article 50 of their collective bargaining agreement, which requires that drivers be compensated for "all time spent in the service of the Employer." (App. 27) The union in turn filed formal grievances under Article 44 of the collective bargaining agreement, which provides that "any controversy which might arise" between the union and management must be submitted to a joint grievance committee whose decision "shall be final and binding on both parties." (App. 24-25) Unlike conventional arbitration, however, the joint grievance committees contain no neutral tie-breakers or impartial members; they are composed of an equal number of union and management representatives. *See generally* Azoff, *Joint Committees as an Alternative Form of Arbitration Under the NLRA,* 47 Tul.L.Rev. 325 (1973); Feller, *A General Theory of the Collective Bargaining Agreement,* 61 Cal.L.Rev. 663, 836-838 (1973).

The grievances were presented to a joint grievance committee by Local 878. Although, as the lower courts subsequently found, the unpaid time falls within the literal language of their contract, the grievance committee re-

jected the claims. No written decisions were issued; no transcripts were made; the votes were not recorded; and, as both ABF and Local 878 conceded before the court of appeals (Pet. App. 31a), there is no indication that any claim under the FLSA was presented to, much less considered by, the grievance committee.

B. The Proceedings Below

In March 1977, the two unsuccessful grievants, joined by seven other ABF drivers, brought an action in the United States District Court for the Eastern District of Arkansas to obtain pay for the time spent conducting pre-trip safety inspections and taking unsafe vehicles to the company's repair facility (App. 3).[1] Both ABF and Local 878 were named as defendants, as was the Local's president, A.J. Pickering. The first count of the complaint was brought under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA"), which requires that all covered workers be paid at least the minimum wage for all "hours worked." *Id.* §§ 206, 216(b). Petitioners contended that ABF's refusal to compensate them for this time violated the minimum wage provision of the FLSA, and hence they were entitled to double damages and attorney's fees, as mandated by the Act. *Id.* § 216(b).

The second count of the complaint was based on the union's contract with ABF, which requires compensation for "all time spent in the service of the Employer." To

[1]Barrentine and Scates were joined by Local 878 members Edwards, Keeney, Blanton, Robinson, Deaton, Mittchell and Young. Prior to trial, the court dismissed the complaint as to Robinson, Young and Edwards because of their failure to answer interrogatories. Although Mr. Scates was initially a plaintiff in this action, he recently was elected an officer of Local 878 and has filed a motion with the district court for leave to withdraw. Accordingly, Mr. Scates did not join the petition for certiorari filed in this action.

overcome the hurdle of the prior grievance committee decisions, petitioners asserted that Local 878 had breached its duty of fair representation by entering into a "side deal" with ABF to avoid payment. Therefore, petitioners alleged, the grievance awards barring compensation should be set aside and they should be awarded proper compensation under the contract (App. 6-8).

Following a bench trial, the district court issued an oral ruling (Pet. App. 1a). The court first found that "[t]here is no question that the driver when [inspecting the vehicle and driving it to the repair facility] is on the employer's business; at least no question in my mind." (Pet. App. 4a). The court was also persuaded that ABF paid its drivers at other terminals for performing safety checks, and that other companies who are parties to the collective bargaining agreement did the same (Pet. App. 3a-4a). The court further concluded that "the evidence seems. . . rather to predominate in favor of finding that there was a side agreement." (Pet. App. 8a). Nonetheless, the court refused to award petitioners judgment on their contract claim, finding that such an agreement was not necessarily improper since the labor laws permit "parties by their own actions. . . [to] fill in gaps that always arise" in the enforcement of collective bargaining agreements (Pet. App. 8a). Based on this finding, the district court dismissed the action with prejudice. The district court did not address petitioners' FLSA claim.

On appeal, the Eighth Circuit unanimously affirmed the district court's ruling on the contract claim, concluding that the grievance committee's decisions were not "tainted" by a side deal, if one existed (Pet. App. 30a). That ruling is not challenged in this Court.

Turning to petitioners' FLSA claim, a divided court held that "wage disputes arising under the FLSA . . . may be the subject of binding arbitration where the collective bargain-

ing agreement so provides . . . at least in situations where the employees knowingly and voluntarily submit their grievances to arbitration under the terms of that agreement." (Pet. App. 23a). In so ruling, Judge Henley, writing for himself and District Judge Schatz, rejected petitioners' contention that the rationale of this Court's decision in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), applies with equal force to claims arising under the FLSA (Pet. App. 24a). The majority purported to distinguish *Gardner-Denver* on the ground that "simple wage dispute[s]" do not implicate the same public policy considerations that are present in Title VII cases (Pet. App. 25a). While troubled by the fact that five of the petitioners had not filed grievances, the majority held that they too were precluded from pursuing an FLSA remedy because no objection had been lodged against the district court's "treating the case as though each of the named plaintiffs had actually filed grievances which were considered and denied." (Pet. App. 26a). In so holding, however, the court overlooked the fact that the five had acceded to this procedure only in order to make it unnecessary for the district court to reach ABF's contention that their claims should be dismissed for failing to exhaust their grievance remedies.

Judge Heaney dissented from the court's FLSA ruling, finding the majority opinion in conflict with *Gardner-Denver*. Judge Heaney concluded that since "there was no intent to submit the FLSA claim to arbitration and it was not submitted to arbitration," the case should be remanded "for a determination of the validity of plaintiffs' FLSA claim." (Pet. App. 30a-31a).

SUMMARY OF ARGUMENT

The decision below, if allowed to stand, will substantially erode the guarantees of the Fair Labor Standards Act. According to the Eighth Circuit, workers who submit contract-based wage claims to arbitration, either voluntarily or because of compulsory grievance procedures in their contract, are barred from seeking judicial enforcement of their independent, statutory right to be paid at least the minimum wage for all hours worked. Court review is foreclosed for even those workers, like petitioners, who never submitted their FLSA claims to a grievance committee, nor had the committee pass on the merits of those claims. Because the decision of the court below is inconsistent with the FLSA and conflicts with this Court's decision in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), it should be reversed.

A.

The Fair Labor Standards Act was enacted by Congress in 1938 to ensure that workers were protected from substandard wages and oppressive working hours. To this end, the Act sets out a strict policy of guaranteed compensation for workers covered by the Act, and confers a right to be paid at least the minimum wage for all hours worked. The responsibility for enforcing FLSA rights was assigned to the courts; no other enforcement mechanism is provided by the Act.

The decision below is at odds with the prior decisions of this Court holding that rights conferred by the FLSA cannot be abridged by contract or otherwise prospectively waived. *Brooklyn Savings Bank v. O'Neil,* 324 U.S. 697, 706-708 (1945); *Tennessee Coal, Iron R.R. v. Muscoda Local No. 123,* 321 U.S. 590, 597, 601-603 (1944). Con-

trary to this settled principle, the decision of the lower court effectively insulates from judicial scrutiny a contract which cuts back on petitioners' statutory right to minimum wage payments for all hours worked.

The decision of the court below also conflicts with the legislative history of the Act. By determining that petitioners' FLSA rights are, in effect, merged with their rights under the collective bargaining agreement, the decision transfers the responsibility for enforcing FLSA rights from the workers to their unions, which process grievance claims. In its deliberations leading up to the passage of the Act, and in the 1947 amendments to the Act, Congress took strong measures to ensure that it is the individual employee – and not his union – who is responsible for handling and pursuing FLSA claims. Since the decision below effectively gives sole control of workers' FLSA claims back to their unions, it impermissibly infringes on rights protected by the FLSA.

B.

In determining that the prior decision of the joint grievance committee foreclosed review of petitioners' FLSA claim, the court below departed from the principle of non-deferral laid down by this Court in *Gardner-Denver*. There, this Court held that in Title VII actions, courts should not defer to grievance decisions but must instead examine such statutory claims on the merits.

The rationale underlying the non-deferral principle of *Gardner-Denver* applies with equal force in the FLSA context. Title VII and the FLSA are both remedial statutes which accord employees distinct and independent rights; both vest ultimate enforcement responsibility in the courts; and both confer rights which cannot be prospectively waived. In light of the unmistakable parallels be-

tween the statutes, the lower court's refusal to follow *Gardner-Denver* was plainly in error.

Moreover, arbitration is an inadequate forum for the vindication of the important rights conferred by the FLSA. The role of the arbitrator is to interpret and apply the terms of the contract — not the dictates of public law. Arbitrators have no authority to decide statutory questions, nor do they have the special competence required to render the peculiarly judicial decisions required by the FLSA. Arbitrators also lack the authority to implement the broad range of remedies mandated by the FLSA. Thus, despite the critical role the FLSA's liquidated damage provision was intended to play both as a deterrent to employer violations and as a means to ensure full compensation to aggrieved workers, the remedy could not be enforced by arbitrators. It is evident that arbitration is no more suitable as a means of protecting FLSA rights than it is for protecting rights under Title VII. Accordingly, the lower court was incorrect in ruling that petitioners' FLSA rights may properly be relegated to the arbitral forum.

C.

In dismissing petitioners' FLSA claims, the majority below found support for its result in the national policy favoring arbitration as a means of resolving labor disputes. However, this policy is not as broad in its sweep as the lower court suggests; rather, as prior decisions of this Court establish, the arbitral forum does not displace adjudication of statutory claims. While contract rights should be pursued in the arbitral forum, statutory rights are to be given effect by the courts.

ARGUMENT

A. The Decision Below Conflicts With the Statutory Scheme of the FLSA

Congress enacted the FLSA in 1938 to eliminate "labor conditions detrimental to the maintenance of minimum standards of living necessary for health, efficiency and general well-being of workers." 29 U.S.C. § 202(a). To achieve these sweeping social goals, the FLSA sets out a strict policy of guaranteed minimum wage compensation for all hours worked and a premium rate of pay for overtime work. 29 U.S.C. §§ 206, 207. In light of the remedial nature of the statute, this Court has repeatedly held that rights conferred by the FLSA cannot be abridged by contract or otherwise prospectively waived. *Schulte v. Gangi,* 328 U.S. 108 (1946); *Brooklyn Savings Bank v. O'Neil,* 324 U.S. 697, 706-708 (1945); *Tennessee Coal, Iron R.R. v. Muscoda Local No. 123,* 321 U.S. 590, 601-603 (1944).

Congress placed the responsibility for enforcement of the FLSA's guarantees with both state and federal courts. Under the Act, courts are authorized to grant injunctive relief and award double damages and attorney's fees in all cases where the employee prevails. 29 U.S.C. § 216(b). To ensure effective enforcement, Congress has armed workers with a broad right to file suit and authorized the Secretary of Labor to bring both injunctive and back-pay actions on behalf of workers. 29 U.S.C. § 216(c).

In keeping with the statutory scheme, petitioners brought this action under the FLSA, alleging that they were entitled to at least minimum wage compensation for the time spent conducting pre-trip inspections and, if defects were found, driving the vehicles to the repair facility. The court below held that petitioners, by having their union pursue their grievances under the wage provisions of the collective bargaining agreement through the joint

grievance committee, had waived their right to maintain this action against ABF for violation of their rights under the FLSA. The lower court cited no statutory authority for this result, and none exists. Petitioners had complied in all respects with the statutory requisites for bringing suit. There is no statutory provision for waiver of the right to sue, nor is there any provision of the FLSA which mandates withdrawal of jurisdiction on account of prior arbitration of similar contract issues. To the contrary, the FLSA grants courts jurisdiction to adjudicate FLSA claims without restriction or qualification, apart from that of timeliness, and petitioners' suit was timely filed. Accordingly, the decision below runs directly counter to the broad jurisdictional provisions of the FLSA.

The decision below is also at odds with the settled principle that rights secured by the FLSA may not be abrogated by contract or waived during the collective bargaining process. In *Tennessee Coal, Iron R.R. v. Muscoda Local No. 123, supra,* this Court admonished, in language equally apt here, that in enacting the FLSA,

> Congress intended . . . to achieve a uniform national policy of guaranteeing compensation for all work or employment engaged in by employees covered by the Act. Any custom or contract falling short of that policy, like an agreement to pay less than minimum wage requirements, cannot be utilized to deprive employees of their statutory rights.

321 U.S. at 602-603. *Accord, Brooklyn Savings Bank v. O'Neil, supra,* 324 U.S. at 707; *Schulte v. Gangi, supra,* 328 U.S. at 116.

In the face of this well-settled principle of law, the ruling of the majority below effectively insulates from

judicial scrutiny an agreement which plainly "deprive[s] employees of their statutory right[]" to compensation. Here, there can be little doubt that the time petitioners spend conducting the pre-trip inspection of their vehicles and driving them to ABF's repair facility when defects are found, is compensable under the FLSA since these activities are taken in ABF's interest. *See Steiner v. Mitchell,* 350 U.S. 247 (1956); *Dunlop v. City Electric, Inc.,* 527 F.2d 394, 398-399 (5th Cir. 1976); *Mitchell v. Mitchell Truck Line, Inc.,* 286 F.2d 721, 725 (5th Cir. 1961). The district court found that this time "is on the employer's business" (Pet. App. 4a), a finding the Eighth Circuit had "little quarrel with." (Pet. App. 21a). Nonetheless, the decision below effectively permits a collective bargaining agreement to cut back on rights conferred by the FLSA, a result that is plainly impermissible under the prior decisions of this Court.

Nor can the ruling of the majority below be squared with the FLSA's legislative history. Congress never envisioned that the enforcement of FLSA rights would be entrusted to arbitration or to grievance committees. Indeed, Congress has repeatedly taken measures to ensure that the grievance process does not intrude upon the judicial channels established for enforcing FLSA claims. During its deliberations on the proposed Act, Congress declined to adopt a version advocated by management interests to provide for enforcement of the FLSA through the grievance process. Joint Hearings before the Senate Committee on Education and Labor and the House Committee on Labor, 75th Cong., 1st Sess. 694-695 (1937) ("Joint Hearings").

Congress also specifically rejected a proposal to exempt workers in industries or occupations which had been unionized from the minimum wage and hour provisions of

the Act. An early House bill provided that where a "substantial portion of the employees" in a given industry or occupation were covered by "collective bargaining agreements" and the "facilities for collective bargaining" were adequate to accomplish the purposes of the Act, the minimum wage and maximum hour provisions would not apply. H.R. Rep. No. 1452, 75th Cong., 1st Sess. 15 (1937). Although the proposal was discussed at length, *see, e.g.*, Joint Hearings at 278-281, Congress rejected this effort to exclude unionized workers from the ambit of the statute. Instead, Congress chose the far more limited course of giving effect to collective bargaining agreements in only two narrow areas concerning the calculation of overtime, *see* 29 U.S.C. § 207(b)(1) & (2), and thus plainly "did not intend that other collective bargaining agreements should relieve employers from paying . . . [the minimal standards laid down in the Act] regardless of the provisions of such contracts." *Tennessee Coal, Iron R.R. v. Muscoda Local No. 123, supra,* 321 U.S. at 602 n.18.

Petitioners' claim is further bolstered by the Portal-to-Portal Act amendments to the FLSA. In 1947, Congress deleted the portion of section 216(b) which had provided that "employees may designate an agent or representative to maintain" an action on their behalf. 61 Stat. 87. The stated purpose of the amendment was to remove unions from any role in pursuing FLSA claims on behalf of their members. S. Rep. No. 48, 80th Cong., 1st Sess. 2, 49 (1947). By placing the right to bring suit in the employee's own hands, Congress further strengthened the role of the individual employee in enforcement of the statute's requirements. In so doing, Congress made clear that it was the workers – not their unions – who should have control of their FLSA claims.

When viewed in light of the 1947 amendment to the

FLSA, the error of the court below becomes even more apparent. While that amendment was intended to oust unions from any role in pursuing FLSA claims on behalf of their members, under the lower court's theory, FLSA claims would be subordinated to contract claims, since it is settled doctrine that it is the union – and not the individual employee – which is responsible for the handling and processing of contract grievances. *See Vaca v. Sipes,* 386 U.S. 171, 182 (1967). As a result, the decision of the Eighth Circuit runs directly counter to the FLSA's legislative history and the holdings of this Court in *Tennessee Coal, Brooklyn Savings Bank v. O'Neil* and *Schulte v. Gangi,* and thus cannot be sustained.

B. This Court's Decision In *Gardner-Denver* Establishes That Deferral Is Not Appropriate Where, As Here, The Rights At Stake Are Conferred By Statute, And Congress Has Vested Enforcement Responsibility In The Courts

In ruling that submission of a wage claim to a grievance committee bars access to the courts to enforce rights secured by the FLSA, the court below also strayed far from the teachings of this Court in *Alexander v. Gardner-Denver Co.,* 415 U.S. 36 (1974). There, the Court unanimously held that in Title VII cases, federal courts were not foreclosed from examining *de novo* claims of racial discrimination, even where the underlying claim had been the subject of binding arbitration under the anti-discrimination provisions of a collective bargaining agreement. In so holding, the Court emphasized that the following attributes of Title VII, taken together, counseled against deferral: the statute is remedial in nature and accords employees distinct independent rights which cannot be prospectively waived, 415 U.S. at 51; it vests "final

responsibility for enforcement" in the courts, *id.* at 44; it depends primarily upon private enforcement actions, *id.* at 45; and it is "designed to supplement, rather than supplant, existing laws and institutions relating to employment discrimination," *id.* at 48-49.

The rationale underlying the non-deferral principle articulated in *Gardner-Denver* applies with equal force in the FLSA context. Title VII and the FLSA are congruent in all critical respects. The FLSA, like Title VII, is "remedial and humanitarian in purpose." *Tennessee Coal, Iron R.R. v. Muscoda Local No. 123,* 321 U.S. 590, 597 (1944). Forged during the depression, the FLSA was enacted to eliminate "labor conditions detrimental to the maintenance of minimum standards of living necessary for health, efficiency and general well-being of workers," 29 U.S.C. § 202(a), by ensuring at least a minimum wage for all hours worked and a premium rate for overtime work. *See Overnight Motor Co. v. Missel,* 316 U.S. 572, 576, 578 (1942); *Brooklyn Savings Bank v. O'Neil, supra* 324 U.S. at 706-708. As President Franklin Delano Roosevelt emphasized in his message sending the bill to Congress, under the Act workers would receive "[a] fair day's pay for a fair day's work" and thus be shielded from the evils of "overwork" as well as "underpay." 81 Cong. Rec. 4983 (1937); *quoted in Overnight Motor Co. v. Missel, supra,* 316 U.S. at 578. Recognizing the humanitarian underpinnings of the Act, this Court has cautioned that the provisions of the FLSA, like those of Title VII, "must not be interpreted or applied in a narrow and grudging manner," but rather construed broadly, to accomplish the Act's remedial purpose. *Tennessee Coal, Iron R.R. v. Muscoda Local No. 123, supra,* 321 U.S. at 597.

Equally important, the FLSA, like Title VII, creates distinct statutory rights which directly benefit the affected

worker. Thus, under the FLSA, covered workers have the right to be paid the minimum wage for all hours worked, to receive overtime pay for hours worked in excess of the statutory standard, and to bring suit to enforce these rights. 29 U.S.C. §§ 206, 207, 216(b). Moreover, to protect these rights fully and to provide the "deterrent effect which Congress intended that §16(b) should have," this Court has repeatedly held that the rights granted by the FLSA are "statutory right[s] conferred on a private party" which may not be waived or bargained away. *Brooklyn Savings Bank v. O'Neil, supra,* 324 U.S. at 704-705, 709. *See also Schulte v. Gangi, supra,* 328 U.S. at 114.

The parallel nature of the two statutes is also exhibited in their enforcement schemes. As in Title VII, Congress intended affected workers to shoulder the primary responsibility for enforcing the FLSA's requirements. The statute itself could hardly be more explicit: an "action to recover such liability [under the minimum wage and overtime provisions] may be maintained . . . by any one or more employees for and in behalf of himself or themselves or other employees similarly situated." 29 U.S.C. § 216(b); *see also Brooklyn Savings Bank v. O'Neil, supra,* 324 U.S. at 705-706, n.16. Only the Secretary of Labor shares the burden of enforcing the statute, and his authority to bring back-pay actions is expressly derivative from that of an affected employee. 29 U.S.C. § 216(c).

The legislative history confirms Congress' intention that employees assume the lead role in enforcing the Act. The provisions of section 216(b) appeared for the first time in a bill reported by a Conference Committee of both Houses. H. Rep. No. 2738, 75th Cong., 3d Sess. 33 (1938). While the debates in both Houses prior to the adoption of the Conference Report were quite brief, 83 Cong. Rec.

9158-78, 9246-67, the one reference to section 216(b) is highly instructive. Representative Keller noted:

> If there shall occur violations of either the wage or hours, the employees can themselves, or by designated agent or representative, maintain an action in any court to recover the wages due them . . . The provision has the further virtue of minimizing the cost of enforcement by the Government . . . [because it] puts directly into the hands of the employees who are affected by violation the means and ability to assert and enforce their own rights, thus avoiding the assumption by Government of the sole responsibility to enforce the act.

83 Cong. Rec. 9264 (1938). Thus, Congress left no room for doubt that it intended the affected employee to assume the principal duty of enforcement.[2]

Similarly, as with Title VII, Congress reposed in the courts the sole responsibility for enforcement of the FLSA's dictates. The statute provides that an action to enforce the FLSA "may be maintained in any court of competent jurisdiction" and that "the court in such action" shall impose the remedies provided for in the statute. 29 U.S.C. § 216(b). No other means of enforcement is provided. In this respect, the need to preserve unfettered access to the courts under the FLSA is even more pronounced than under Title VII. In Title VII, Congress vested the Equal Employment Opportunity Commission and state agencies with the authority to investigate and mediate claims of racial discrimination as a means of ob-

[2]This conclusion is fortified by the 1947 amendment to the FLSA which deleted the provision of section 216(b) permitting actions to be brought on behalf of workers by their designated agents or representatives. *See* p. 14, *supra*.

viating the need for court enforcement. Moreover, to ensure full opportunity for conciliation, Title VII requires consideration by such an agency as a prerequisite to legal action. *See Mohasco Corp. v. Silver,* 100 S.Ct. 2486 (1980). By contrast, the Department of Labor has no authority to encourage settlement of FLSA claims. Nor does the FLSA contain exhaustion requirements of any sort. To the contrary, the FLSA grants "any court of competent jurisdiction" plenary authority to adjudicate and enforce FLSA rights without restriction, aside from that of timeliness. The absence of any deferral period or other jurisdictional prerequisites underscores Congress' intent to allow FLSA plaintiffs unencumbered access to the courts.

An additional, important parallel between the statutes is that they both were intended to supplement, rather than supplant, existing legislation and institutional practices. In enacting the FLSA, Congress expressly disavowed any interest in abrogating labor contracts which provided for higher wage floors. *E.g.,* 83 Cong. Rec. 9177 (1938). Congress also did not intend to displace or pre-empt state laws setting *higher* minimum standards. 29 U.S.C. § 218. On the contrary, throughout the legislative debates leading up to its passage, it was understood that the legislation would do no more than provide floors below which no employer subject to the Act could fall. 83 Cong. Rec. 9164, 9256-58 (1938). In this respect, the FLSA mirrors Title VII, which Congress intended to be applied in tandem with other statutes. *Alexander v. Gardner-Denver, supra,* 415 U.S. at 48-49.

Despite the unmistakable parallels between Title VII and the FLSA, the court below rejected application of the non-deferral principle laid down in *Gardner-Denver,* asserting, without explanation, that since the FLSA involves "simple wage claims" which have traditionally been

the subject of arbitration, deferral was appropriate (Pet. App. 25a). To support its ruling, the lower court relied heavily on *Satterwhite v. United Parcel Service,* 496 F.2d 448, 452 (10th Cir.), *cert. denied,* 419 U.S. 1079 (1974), in which the court held that "when a wage dispute is submitted to arbitration in accordance with a collective-bargaining agreement, the employees may not thereafter maintain an FLSA § 16(b) suit for recovery on the same factual occurrence as that presented to the arbitrator." The linchpin of the holding below, and that in *Satterwhite,* was the premise that "[i]n a context of racial discrimination the right of an employee to be free from discrimination may well be thought to stand in more need of protection than conventional arbitration of a simple wage dispute may provide." (Pet. App. 25a).

There are several reasons why the distinction between Title VII and the FLSA fashioned by the court below is not sound. In the first place, the statutes are symmetrical in all critical respects, and thus there is no *statutory* basis for concluding that the non-deferral principle of *Gardner-Denver* is inapplicable. Indeed, the ruling below gives short shrift to the decision of the District of Columbia Circuit in *Leone v. Mobil Oil Co.,* 523 F.2d 1153 (D.C. Cir. 1975), which held, in a somewhat different procedural setting, that *Gardner-Denver* applies in the FLSA context.

Second, it is not the proper role of the courts to measure the relative importance of different remedial statutes enacted by Congress, and thus effectively undermine the enforcement schemes of those statutes considered of lesser importance. The lower court's ruling that FLSA claims are somehow worthy of less vigilant protection than Title VII claims is devoid of support. Congress has never declared that eradicating discrimination through Title VII is a more pressing societal goal than ensuring through the FLSA that workers are not forced to work excessive

hours, work without compensation, or be denied overtime payments. Indeed, as noted above, *see* p. 16, *supra,* this Court has long recognized the vital policy underpinnings of the FLSA.

Most important, however, any suggestion that the arbitration process is better suited to enforce FLSA rights than it is to protect rights accorded by Title VII is without foundation. This Court has often admonished that "the choice of forums inevitably affects the scope of the substantive right to be vindicated." *Gardner-Denver, supra,* 415 U.S. at 56, *quoting U.S. Bulk Carriers v. Arguelles,* 400 U.S. 351, 359-360 (1971) (Harlan, J., concurring). *See also Bernhardt v. Polygraphic Co.,* 350 U.S. 198, 203 (1956), *Wilko v. Swan,* 346 U.S. 427, 434-439 (1953). In section 216(b), Congress expressly provided that courts should decide claims involving the wage and hours provisions of the FLSA, and set forth the rights of employees in terms of their right to bring suit for recovery under the statute. The statute is written in terms of *court* enforcement. The substantive provisions of the Act which depend on judicial enforcement are, of course, " an important part of the parcel of rights" conferred by the FLSA. *See Bernhardt v. Polygraphic Co., supra,* 350 U.S. at 203.

There are several fundamental differences between arbitration and court review which underscore the importance of recognizing that rights established by statute should be judicially enforceable even if contract rights are not. The most fundamental difference is that the role of the arbitrator is to interpret and apply the provisions of the contract – not to safeguard rights guaranteed by statute. Indeed, the arbitrator has no general authority to invoke public law, even where there is a conflict between the dictates of a statute and the bargain between the parties. As this Court emphasized in *Gardner-Denver* "if an arbitral decision is based 'solely upon the arbitrator's view

of the requirements of enacted legislation,' rather than on an interpretation of the collective bargaining agreement, the arbitrator has 'exceeded the scope of the submission,' and the award will not be enforced." 415 U.S. at 53, *quoting United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). Yet as this Court has often noted, and as this case illustrates, contract rights may well cut back rights secured by the FLSA. *See, e.g., Overnight Motor Transport Co. v. Missel,* 316 U.S. 572 (1943); *Tennessee Coal, Iron R.R. v. Muscoda Local No. 123, supra; United States v. Burnette,* 546 F.2d 187, 189 (5th Cir. 1977). Nonetheless, the arbitrator would be bound to enforce the contract, even though by so doing he would be undermining rights accorded by the FLSA.

Nor could an arbitrator impose the full range of statutory remedies. For example, this Court has held that the minimum wage, overtime compensation, and double damages provisions of the FLSA cannot be waived or bargained away. *Brooklyn Savings Bank v. O'Neil, supra,* 324 U.S. at 706-708; *Schulte Co. v. Gangi, supra,* 328 U.S. at 114. Those decisions were predicated on the recognition that these rights form the core of the FLSA and must be fully enforced to effectuate the statute's goals. Yet it is highly doubtful that an arbitrator could do more than award compensation under the contract's wage provisions. Even though they are mandated by statute, an arbitrator could not assess liquidated damages, nor award statutory overtime payments or attorney's fees, since he "is confined to interpretation and application of the collective bargaining agreement" and his "award is legitimate only so long as it draws its essence" from the agreement. *United Steelworkers of America v. Enterprise Wheel & Car Corp., supra,* 363 U.S. at 597. Certainly, the collective bargaining agreement here confers no such expansive authority on the joint grievance committee.

Even aside from these fundamental drawbacks, other problems exist as well. First, arbitrators, and particularly members of joint grievance committees, who are drawn from the ranks of management and union leadership, are without special expertise in the interpretation and application of statutory rights. *See U.S. Bulk Carriers v. Arguelles, supra,* 400 U.S. at 360-362 (Harlan, J. concurring). Indeed, many arbitrators, and virtually all of the members of joint grievance committees, are not lawyers. *See* Note, *The NLRB and Deference to Arbitration,* 77 Yale L.J. 1191, 1194 n.28 (1968). Thus, while arbitrators, expert in the "industrial common law — the practices of the industry and the shop", may well be ideally suited to construe and enforce collective bargaining agreements, these skills have little to do with the judicial tasks required in interpreting the FLSA.

In sum, the majority below was seriously in error in concluding that *Gardner-Denver* does not apply with equal force in the FLSA context. As is evident, the structure of Title VII and the FLSA mirror one another in all critical respects. Moreover, grievance procedures provide no more a bulwark to protect FLSA rights than they do to protect Title VII rights. Absent meaningful access to the courts, FLSA rights may be altered, abrogated, or bargained away, while employees remain powerless to enforce those rights. Indeed, in the *Satterwhite* decision relied upon by the court below, the Tenth Circuit acknowledged that the arbitrator there had reached a "compromise" decision which might well have undercut FLSA rights. 496 F.2d at 449. Since this kind of compromise result is antithetical to the statutory scheme of the FLSA and in conflict with the thrust of the Court's ruling in *Gardner-Denver,* the decision below should be reversed.[3]

[3]The potential for compromise is further heightened by the particular form of grievance procedure used in this case, in which the

C. Non-Deferral In FLSA Cases Will In No Way Undermine The National Policy Favoring Arbitration

Despite the absence of any statutory basis for relegating FLSA statutory rights to arbitration, the majority below foreclosed petitioners' right to judicial consideration of their FLSA claim because of what it perceived to be the dictates of national labor policy. For support, the majority cited section 203(d) of the National Labor Relations Act, 29 U.S.C. § 173(d), which provides that final adjustment "by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes." In the *Steelworkers Trilogy*,[4] this Court held that under section 203(d), if employers and unions arbitrate contract grievances in accordance with the provisions of their collective bargaining agreement, they may be precluded from going to court, noting that "so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their

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neutral arbitrator is replaced by an equal number of union and employer representatives. The strength of the joint committee system is that it permits the parties to negotiate over unanticipated ambiguities in the collective bargaining agreement even after it has been signed and ratified. *See* Azoff, *Joint Committees as an Alternative Form of Arbitration Under the NLRA*, 47 Tul.L.Rev. 325, 327 (1973). This very feature, although functionally similar to arbitration for the purpose of contract dispute resolution, *General Drivers, Warehousemen & Helpers Local No. 89 v. Riss*, 372 U.S. 517 (1963), makes the joint committee process especially unsuitable for resolution of FLSA claims, which may not be negotiated away through the collective bargaining process or, as in this case, through a "side deal." Petitioners wish to make clear that while they elected not to challenge the Eighth Circuit's disposition of their contract grievance claim, they believe it was also erroneous.

[4] *United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

interpretation of the contract is different than his." *United Steelworkers of America v. Enterprise Wheel & Car Corp., supra,* 363 U.S. at 599. And in *Republic Steel Corp. v. Maddox,* 379 U.S. 650 (1965), this Court held that contract grievance procedures must be exhausted prior to submission of contract claims to the courts.

The reliance of the majority below on this policy of deferral to arbitration was seriously misplaced. The holdings of these cases fall far short of requiring a court to accept an arbitrator's denial of a contractual claim as dispositive of a distinct, independent claim under a statute. The Court's opinions in those cases stand squarely for the primacy of arbitration as a means of resolving questions arising under collective bargaining agreement; but they in no way undercut the responsibility Congress has entrusted to the courts to resolve statutory claims. Neither Congress nor this Court has ever even hinted that arbitration is an appropriate means of vindicating a worker's statutory rights that exist independent of any contract.

Prior decisions of this Court confirm that the arbitral forum does not displace the courts in the adjudication of *statutory* claims. In at least three decisions, this Court has expressly ruled that statutory rights and those conferred by collective bargaining agreements are properly enforced in different forums. Most recently, in *Gardner-Denver, supra,* the Court unanimously rejected an argument analogous to that raised here, concluding that claims of racial discrimination could be raised both before the courts under Title VII and through grievance procedures spelled out in the employee's collective baregaining agreement. Similarly, in *U.S. Bulk Carriers v. Arguelles,* 400 U.S. 351 (1971), the Court held that federal courts are not precluded from passing on the merits of a claim under the

Seaman's Wage Act, 46 U.S.C. § 596, even where the seaman failed to first invoke the contractual grievance machinery. In his concurring opinion, Mr. Justice Harlan distinguished his opinion for the Court in *Republic Steel v. Maddox, supra,* observing that where the substantive rights being asserted are "derived solely from the contract," strong policy considerations warrant the exclusivity of the arbitral forum. But where a right is claimed under a federal statute, Justice Harlan maintained, "the presumption of comprehensiveness of the arbitral remedy is . . . rebutted" and remedies prescribed by statute for vindication of statutory rights remain available. 400 U.S. at 361-65.[5]

In the same vein, in *McKinney v. Missouri-Kansas-Texas R.R.*, 357 U.S. 265 (1958), this Court held that a serviceman, returning to his prior place of employment after military service, could enforce his seniority rights under the Universal Military Training and Service Act, 50 U.S.C. App. § 459, without first submitting his claim to arbitration under the terms of his collective bargaining agreement. The Court's reasoning suggests that even if the plaintiff had first asserted his contractual rights through arbitration, he would nonetheless have been entitled to bring an action under the statute. *See* 357 U.S. at 270.

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[5]In one critical respect, this case is far more compelling than *Arguelles.* There, the claimant's statutory and contractual claims were intertwined – *i.e.,* whether, and to what extent, he was entitled to the statutory remedy depended "entirely on interpretation and application of the contract." 400 U.S. at 371 (White J., dissenting). By contrast, FLSA rights apply in the same measure regardless of whether a collective bargaining agreement exists or whether the agreement contains minimum wage and maximum hour provisions identical to those set forth in the Act.

Thus, the decisions of this Court strongly reinforce petitioners' claim that, although contract rights are to be pursued through the arbitral process, statutory rights may be vindicated in the courts. This principle applies *a fortiori* where, as here, the statute confers a right upon individuals that exists totally independent of those conferred by contract and assigns the responsibility for its enforcement to the courts. Petitioners submit that the courts below strayed far from this principle in merging petitioners' contractual and statutory claims, without giving due recognition to the fact that FLSA rights are legally separate and distinct from those created by contract. Indeed, Justice Douglas, who, as architect of the *Steelworkers Trilogy,* was a vigorous defender of the primacy of the arbitral process, reached the same conclusion in his forceful dissent from the dismissal of the writ of certiorari as improvidently granted in *Iowa Beef Packers v. Thompson,* 185 N.W.2d 738 (Iowa 1971), noting that *Arguelles* "which kept the courthouse door open, would seem to control this case." 405 U.S. 228, 231 (1972).

As the Court emphasized in *Gardner-Denver,* there is no reason why contract rights and statutory rights should not both be given full protection by allowing an employee's claim to be resolved in the appropriate forum with respect to each of his distinct rights. Indeed, there is nothing novel about this proposition. *See Carey v. Westinghouse Electric Corp.,* 375 U.S. 261, 272 (1964) (setting forth essentially the same procedures under the National Labor Relations Act); *Marshall v. N.L. Industries, Inc.,* 618 F.2d 1220 (7th Cir. 1980) (prior submission of safety claim did not foreclose subsequent action brought by Secretary of Labor under the Occupational Safety and Health Act); *Air Line Pilots Ass'n v. Northwest Airlines, Inc.,* 627 F.2d 272, 277-278 (D.C. Cir. 1980) (court retains jurisdiction to

hear claims under the Employee Retirement Income Security Act of 1974 even though other aspects of same transaction may have to be decided by compulsory arbitration). Moreover, preserving the option of arbitration will encourage employees seeking prompt and inexpensive relief to first invoke their grievance procedure, thereby lessening the likelihood of labor strife and decreasing the burden placed on the courts. *See Gardner-Denver, supra,* 415 U.S. at 55. By the same token, preservation of judicial review will ensure that FLSA rights are fully vindicated.[6]

In sum, while Congress has not expressly spoken on the appropriate relationship between arbitration and rights accorded by the FLSA, other pronouncements by Congress and the decisions of this Court strongly suggest that arbitration should be viewed as another means by which relief from substandard wages or oppressive working hours may be sought, without depriving individuals of their statutory right to court review of their FLSA claims.

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[6]To be sure, in some instances courts reviewing FLSA claims may consider prior arbitration decisions on related contract issues. Although the Court in *Gardner-Denver* expressly declined to "adopt standards as to the weight to be accorded an arbitral decision," it noted that under certain circumstances a court might properly accord a prior aribtral decision substantial weight. 415 U.S. 60 n.21. As in *Gardner-Denver,* there is no need to examine that question in this case. In any event, the decisions of the joint grievance committee here should be given no weight at all. There is no evidence to suggest that petitioners' FLSA claim was submitted to, let alone considered by, the joint grievance committee, nor did the committee issue any written decision. Thus, here there simply is nothing in the record to which weight could be accorded. For this reason, even on this issue, the decision in *Union de Tronquistas de Puerto Rico, Local 901 v. Flagship Hotel Corp.*, 544 F.2d 8 (1st Cir. 1977), relied on heavily by the court below, is inapposite. There, in sharp contrast to this case, the employees' claim, which arose under an administrative regulation, was expressly submitted to, and resolved by, the arbitrator. 544 F.2d at 9-10.

Both federal labor policy and the policies underlying the FLSA can be most fully realized by "permitting an employee to pursue fully both his remedy under the grievance arbitration clause of a collective bargaining agreement and his cause of action" under the statute. *Gardner-Denver, supra,* 415 U.S. at 59-60. Indeed, petitioners submit that this is the only approach which fully effectuates Congress' intention to preserve all avenues to root out substandard wages and oppressively long working hours.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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